

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 Steven C. Scott,

Case No.: 2:19-cv-01661-JAD-EJY

4 Petitioner

5 v.

Order Dismissing Petition

6 Jo Gentry, et al.,

7 Respondents
8

9 Petitioner Steven C. Scott brings this pro se 28 U.S.C. § 2254 petition for a writ of habeas
10 corpus to challenge his state-court conviction for possession of a stolen vehicle and possession of
11 credit cards without cardholder consent.¹ Having reviewed this petition, the court concludes that
12 it must be dismissed as a second and successive petition filed without prior appellate-court
13 approval.

14 **Discussion**

15 28 U.S.C. § 2244(3)(A) states that “[b]efore a second or successive application permitted
16 by this section is filed in the district court, the applicant shall move in the appropriate court of
17 appeals for an order authorizing the district court to consider the application.” If a petition is
18 dismissed with prejudice as untimely or because of procedural default, the dismissal constitutes a
19 disposition on the merits and renders a subsequent petition second or successive for purposes of
20 28 U.S.C. § 2244.²

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¹ ECF Nos. 1-1 at 2.

23 ² *McNabb v. Yates*, 576 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d
1049, 1053 (9th Cir. 2005).

1 Scott indicates on the face of his petition that he seeks to challenge his state judgment of
2 conviction for possession of stolen vehicle and possession of credit cards without cardholder
3 consent for which he is serving three life terms with the possibility of parole after ten years on
4 each term.³ He also indicates that he previously challenged this judgment of conviction in case
5 no. 2:06-cv-01514-JCM-LRL. In September 2009, the court denied that original petition on its
6 merits, and judgment was entered.⁴ That disposition makes this petition a second or successive
7 habeas corpus petition,⁵ and Scott was required to obtain authorization from the Ninth Circuit
8 Court of Appeals before he could bring it.⁶ Because Scott has not indicated that he received that
9 authorization, I dismiss this petition with prejudice. And because reasonable jurists would not
10 find this conclusion to be debatable or wrong, I decline to issue a certificate of appealability.

11 **Conclusion**

12 **IT IS THEREFORE ORDERED** that the Clerk of Court is directed to **DETACH** and
13 **FILE** the petition (ECF No. 1-1), **ADD** Aaron D. Ford, Nevada Attorney General, as counsel for
14 respondents, and **ELECTRONICALLY SERVE** the petition, along with a copy of this order,
15 on respondents. No response by respondents is necessary.

16 **IT IS FURTHER ORDERED** that **the petition is DISMISSED and a certificate of**
17 **appealability is DENIED.**

18 **IT IS FURTHER ORDERED** that the Clerk of Court is directed to **ENTER**
19 **JUDGMENT** accordingly and close this case.

20 _____
U.S. District Judge Jennifer A. Dorsey
Dated: February 5, 2020

21 _____
22 ³ ECF No. 1-1 at 2.

23 ⁴ See 2:06-cv-01514-JCM-LRL, ECF Nos. 38, 39.

⁵ *Henderson*, 396 F.3d at 1053.

⁶ 28 U.S.C. § 2244(b)(3).